

FILED

MAY - 6 2009

**Clerk, U.S. District and
Bankruptcy Courts**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,
501 School Street, S.W., Suite 500
Washington, DC 20024,

Plaintiff,

v.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION,
300 E Street, SW
Washington, DC 20546,

Defendant.

Civil Action No.

Case: 1:09-cv-00837

Assigned To : Leon, Richard J.

Assign. Date : 5/6/2009

Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., brings this action against Defendant National Aeronautics and Space Administration ("NASA") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest

mission, Plaintiff regularly serves FOIA requests on federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at 300 E Street, SW, Washington, DC 20546. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On November 4, 2008, Plaintiff sent a FOIA request to Defendant, seeking access to the following records:

1. Any and all records concerning capabilities of Venezuela's Satellite (Simon Bolivar/Venesat) to collect imagery, signal intercepts, radar, infrared and/or electronic information on the United States and/or United States' interests.
2. Correspondence with China and the United States and/or Venezuela and the United States concerning either of the following:
 - a. A framework for space cooperation.
 - b. Optical and radar spacecraft (such as The Disaster Reduction and Environmental Spacecraft).
 - c. Simon Bolivar/Venesat satellite.
3. Any and all records concerning the United States' upcoming space shuttle suspension between 2010 and 2015 and plans to utilize other nations' space capabilities (including leasing, collaboration, etc., and including Russia's Soyuz craft).
4. Records concerning China's potential admittance into the International Space Station in the following context:
 - a. China's potential to contribute significant finances to the space station.
 - b. Utilizing China's hardware for the space station.

- c. Any proposed timelines for China's admission.
- d. Correspondence with China about potential admission.
- e. Conditions such as compliance prior to admission (example: proliferation agreements).
- f. China's potential to form a competing space station if admission is denied.

5. Any and all records concerning U.S. defense contractors collaborating with China on designing, developing, launching, and/or sourcing satellites and other advanced technology.

The time frame for the request was from 2003 to the present.

6. Defendant acknowledged receipt of Plaintiff's FOIA request by e-mail dated November 8, 2008. Defendant's November 8, 2008 e-mail assigned Plaintiff's request No. 2009-026. However, Defendant's November 8, 2008 e-mail did not include any responsive documents or state with specificity when Plaintiff could expect to receive a substantive response.

7. On December 10, 2008, Plaintiff sent an e-mail to Defendant inquiring about the status of Plaintiff's request. Defendant responded to Plaintiff by e-mail dated December 16, 2008. However, Defendant's December 16, 2008 e-mail simply requested additional time to respond to the request and did not include any responsive documents or state with specificity when Plaintiff could expect to receive a substantive response.

8. On January 22, 2009, Plaintiff sent a letter via fax and certified mail to Defendant inquiring about the status of Plaintiff's request. Plaintiff never received a substantive response to its request for an update.

9. On March 17, 2009, Plaintiff sent a letter via certified mail to Defendant inquiring about the status of Plaintiff's request. Defendant responded to Plaintiff's March 17, 2009 letter

by e-mail dated March 30, 2009. Defendant's March 30, 2009 e-mail requested that Plaintiff narrow the scope of part 3 of its November 4, 2008 FOIA request. Defendant's March 30, 2009 e-mail did not include any responsive documents or state with specificity when Plaintiff could expect to receive a substantive response.

10. On March 31, 2009, Plaintiff sent Defendant an e-mail agreeing to narrow the scope of part 3 of Plaintiff's November 4, 2008 FOIA request to 2006 to the present.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i), Defendant was required to respond to Plaintiff's November 4, 2008 FOIA request within thirty (30) working days or by December 18, 2008. However, as of May 5, 2009, Defendant has failed to produce records responsive to Plaintiff's request.

12. Because Defendant failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its November 4, 2008 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of FOIA)

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

14. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's November 4, 2008 request within the time limits required by 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B).

15. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its

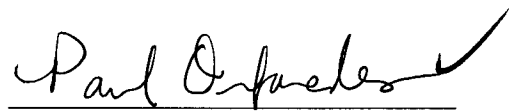
conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's November 4, 2008 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

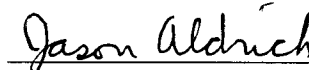
Dated: May 5, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.



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